

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA ex rel.
JOSEPH SEIKEL and TERENCE SEIKEL,

Plaintiffs/Relators,

v.

No. 2:20-cv-05286-ER

DAVID B. ALVAREZ; APPLIED
CONSTRUCTION SOLUTIONS, INC.;
ENERGY TRANSPORTATION, LLC;
ENERGY RESOURCE GROUP, LLC;
ET360, LLC; BEAR CONTRACTING, LLC;
BEAR UTILITIES, LLC; JASON P.
HENDERSON; and JOHN DOES NOS. 1-50,
FICTITIOUS NAMES;

Defendants.

**ALVAREZ DEFENDANTS' MOTION TO
TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)**

Defendants David B. Alvarez; Applied Construction Solutions, Inc.; and Energy Transportation, LLC (collectively “Alvarez Defendants”); by and through the undersigned counsel,¹ hereby respectfully move this Court for an Order transferring the instant *qui tam* action to the Northern District of West Virginia where, among other things, (1) the alleged fraud occurred, (2) where each likely witness resides, (3) where each likely witness works, and (4) where the relevant documents were generated and continue to be stored and maintained. While the Relators self-identify merely as “residents of Michigan,” they are also, more importantly for purposes of this Action, members and owners of a direct competitor that has its principal office in the Northern District of West Virginia and is an Ohio corporation. *See* Kipnis

¹ Counsel notes that she is entering her appearance on behalf of Defendants David B. Alvarez, Applied Construction Solutions, Inc., and Energy Transportation, LLC solely for the purpose of this motion and without accepting service and without waiving any defenses.

Decl., ¶ 4, Exhibit A. This matter has no substantive relationship to the Eastern District of Pennsylvania. None.

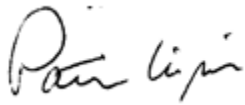
For these reasons, and as discussed in greater detail in the Alvarez Defendants' accompanying Memorandum of Law in support of their Motion to Transfer, this matter should be immediately transferred to the Northern District of West Virginia for resolution on the merits. The Alvarez Defendants intend to move to dismiss this matter under Rule 12(b)(6) and will file it in this Court if the Relators serve their Complaint prior to transfer. At the time of this filing, however, Relators have not served their *qui tam* Complaint. But given that this district's only claim to this matter is procedural by virtue of this being a *qui tam* action, the Alvarez Defendants seek to limit the burdens on this Court moving forward. *See, e.g., Askan v. Faro Techs.*, No. 21-1916, 2021 WL 7630530, *1 n.2 (E.D. Pa. Aug. 19, 2021) (referring motion to dismiss to transferee court).

Wherefore, the Alvarez Defendants respectfully request that the Court grant this Motion and direct the Clerk's Office to transfer this case to the United States District Court for the Northern District of West Virginia, Clarksburg Division.

Date: November 9, 2022

DAVID B. ALVAREZ; APPLIED
CONSTRUCTION SOLUTIONS, INC.; AND
ENERGY TRANSPORTATION, LLC

By Counsel

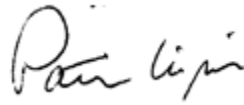


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of November, 2022, a copy of the foregoing was electronically filed and served through the Court's CM/ECF system on counsel of record listed below:

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